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Florence Laurent

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EXAMINER

O'NEILL, BRIANNE E

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3776

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,604	Applicant(s) LAURENT, FLORENCE	
	Examiner BRIANNE O'NEILL	Art Unit 3776	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-16, 18 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 19-34 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendment filed 01/10/2011 has been entered and carefully considered. Claims 17, 24, 26, 27, 34 and 36 have been amended, and claims 1-16, 18 and 35 have been cancelled. The limitations of the newly presented claims have not been found to be patentable over newly discovered prior art, therefore claims 17, 19-34 and 36 are rejected under the new grounds of rejection as set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 19-21, 24-25, 27 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout (US Pub # 2002/0030064) in view of Zhang et al. (US Pat # 6,343,717).

In regards to claim 17, Lacout teaches a hair coloring system comprising at least one container (Figure 1, 1, device) holding a coloring composition for forming a hair coloring product (Paragraph 0001, Lines 4-9), said composition comprising at least one hair colorant; and at least one test device designed to perform a test (Figure 1, 104, applicator member) containing the colorant (Paragraph 001, Lines 7-9); but does not teach the test device comprising a tube having an internal space containing a composition, wherein the tube incorporates an outlet aperture, and wherein the test

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device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture; wherein a liquid or solid plug is arranged inside the tube to isolate the outlet aperture from the internal space of the tube, and wherein the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the internal space of the tube is vented or in response to excess pressure inside the tube. However, Zhang et al. teaches a liquid containing tube having an internal space containing at least one liquid (Figure 2, 48, liquid), wherein the tube incorporates an outlet aperture (Figure 24, 60, opening), and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture (Col 5, Lines 26-33); wherein a liquid or solid plug (Figure 2, 58, liquid barrier) is arranged inside the tube to isolate the outlet aperture from the internal space of the tube, and wherein the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the internal space of the tube is vented or in response to excess pressure inside the tube (Col 5, Lines 44-50, Col 3, Lines 8-10 and see figure 3). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the testing device of Laurent, to be the liquid stick of Zhang et al. in order to provide a more sanitary testing stick.

In regards to claim 19, as applied to claim 17 above, modified Lacout teaches a volume of hair colorant contained in the tube, but does not teach the volume ranges

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from 0.01 ml to 5 ml. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to have the volume be between about 0.01 ml to 5 ml since it has been held that where the general condition of a claim are disclosed in the prior art, discovering an optimum or workable range involves only routine skill in the art. In re Aller, 105 USPQ 233.

In regards to claim 20, as applied to claim 19 above, modified Lacout teaches a volume of hair colorant contained in the tube, but does not teach the volume ranges from 0.005 ml to 1 ml. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to have the volume be between about 0.005 ml to 1 ml since it has been held that where the general condition of a claim are disclosed in the prior art, discovering an optimum or workable range involves only routine skill in the art. In re Aller, 105 USPQ 233.

In regards to claim 21 and 24-25, as applied to claim 17 above, modified Lacout teaches said venting of the internal space of the tube is effected by a breakable element that can be severed, detached, perforated, or deformed, and which is located opposite the outlet aperture (see figure 3 of Zhang et al.), where the tube is fitted with an applicator element (Zhang et al., Figure 25, 72, absorbing element) wherein a cotton tip applicator element (Zhang et al., Figure 25, 72, cotton tip) is separated from the contents of tube prior to use by the plug.

In regards to claim 27, as applied to claim 17 above, modified Lacout teaches the plug is solid (Zhang et al. Figure 22, 50, resilient cap).

In regards to claim 29, as applied to claim 17 above, modified Lacout teaches the coloring composition is an oxidation coloring composition comprising at least one oxidation colorant (Lacout, Paragraph 0030, Lines 1-6).

In regards to claim 30, as applied to claim 17 above, modified Lacout teaches an additional container (Lacout, Figure 1, 30, second compartment) holding an oxidizing composition to be mixed with the coloring composition in order to obtain the hair coloring product (Lacout, Paragraph 0030, Lines 1-6).

In regards to claim 31, as applied to claim 17 above, modified Lacout teaches the coloring composition is a direct coloring composition comprising at least one direct colorant (Lacout, Paragraph 0030, Lines 1-6).

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout and Zhang et al., as applied to claim 21 above, and in view of Tsao (US Pat # 5,702,035).

In regards to claims 22-23, as applied to claim 21 above, modified Lacout teaches the test device, but does not teach it further comprises a component in the form of a tab of residual material to support the breakable element on the tube after it has been severed, however Tsao teaches a breakable liquid reservoir where the liquid is held inside a tube until the end of the tube is severed (Col 2, Lines 24-29) where the tube comprises a component to support the breakable element on the tube after it has been severed, (see figure 2 of Tsao, right side of the figure where the breakable portion is still supported by the tube); said component is in the form of a tab of residual material

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(see figure 2 of Tsao where the device is supported by an end of the tube). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the breakable portion of modified Lacout to be the supported breakable portion of Tsao, in order to provide more stability to the device.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout and Zhang et al., as applied to claim 17 above, and in view of Tsaur (US Pat # 7,416,355).

In regards to claim 26, as applied to claim 17 above, modified Lacout teaches the plug, but does not teach it comprises a liquid chosen from mineral oils, fluorinated products, and silicones. However, Tsaur teaches a fluid filled tube having a plug made of liquid silicone (Col 2, Lines 34-36). It would have been obvious to form the sealer of modified Lacout to be the silicone of Tsaur as an alternative means for sealing the device.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout and Zhang et al., as applied to claim 27 above, and in view of Kao (US Pat # 5,927,884).

In regards to claim 28, as applied to claim 27 above, modified Lacout teaches the solid plug, but does not teach its is made of a silicone powder. However, Kao teaches a liquid retaining/dispensing stick having a solid silicone plug (Col 2, Line 20). It would have been obvious to one of ordinary skill in the art, at the time the invention was made

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to modify the stopper of Lacout to be the solid silicone of Kao, as an alternative material known in the art. With regards to the silicone being a powder, as the material is already in solid form, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the solid silicone to be in any solid state, as it will not change the properties of the material.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout and Zhang et al., as applied to claim 27 above, and in view of Kaufmann et al. (US Pub # 2004/0165935).

In regards to claim 28, as applied to claim 27 above, modified Lacout teaches the solid plug, but does not teach its is made of a silicone powder. However, Kaufmann et al. teaches a liquid retaining/dispensing stick having a sold silicone powder plug (Paragraph 0033, Lines 1-6). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the stopper of Lacout to be the solid silicone powder of Kaufmann et al., as an alternative material known in the art.

Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout and Zhang et al., as applied to claims 29 and 31 above, and in view of Dias et al. (US Pat # 6,432,147).

In regards to claim 32, as applied to claim 29 above, modified Lacout teaches the coloring composition comprises at least one hair colorant but does not teach it includes and at least one compound chosen from surfactants and solvents other than water.

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However, Dias et al. teaches hair dye compositions include surfactants and solvents other than water (Col 4, Line 61- Col 5, Line 7). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the composition of Lacout to include the surfactant, as taught by Dias et al. as such ingredients are well known ingredients for hair dye compositions.

In regards to claim 33, as applied to claim 31 above, modified Lacout teaches the coloring composition comprises at least one hair colorant but does not teach it includes and at least one compound chosen from surfactants and solvents other than water. However, Dias et al. teaches hair dye compositions include surfactants and solvents other than water (Col 4, Line 61- Col 5, Line 7). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the composition of Lacout to include the surfactant, as taught by Dias et al. as such ingredients are well known ingredients for hair dye compositions.

Claims 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout, Zhang et al. and Dias.

In regards to claim 34, Lacout teaches a test device for use in a hair coloring system, said system comprising said test device (Figure 1, 104) and at least one container (Figure 1, 1) holding a coloring composition for forming a hair coloring product (Paragraph 0001, Lines 4-9), said composition comprising at least one hair colorant (Paragraph 0001, Lines 7-8), wherein the hair colorant of said composition is chosen

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from direct colorants (Paragraph 0032, Lines 1-3); at least one hair colorant of said composition and at least one compound chosen from oxidation bases and coupling agents (Paragraph 0030, Lines 1-6); where the test stick contains the hair dye (Paragraph 001, Lines 7-9), but does not teach the test device comprising a tube having an internal space containing a composition, wherein the tube incorporates an outlet aperture, and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture; wherein a liquid or solid plug is arranged inside the tube to isolate the outlet aperture from the internal space of the tube, and wherein the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the internal space of the tube is vented or in response to excess pressure inside the tube; and does not teach at least one compound chosen from solvents and surfactants.

However, Zhang et al. teaches a liquid containing tube having an internal space containing at least one liquid (Figure 2, 48, liquid), wherein the tube incorporates an outlet aperture (Figure 24, 60, opening), and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture (Col 5, Lines 26-33); wherein a liquid or solid plug (Figure 2, 58, liquid barrier) is arranged inside the tube to isolate the outlet aperture from the internal space of the tube, and wherein the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the

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internal space of the tube is vented or in response to excess pressure inside the tube (Col 5, Lines 44-50, Col 3, Lines 8-10 and see figure 3). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the testing device of Laurent, to be the liquid stick of Zhang et al. in order to provide a more sanitary testing stick. With regards to the composition, Dias et al. teaches hair dye compositions include surfactants and solvents other than water (Col 4, Line 61- Col 5, Line 7). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the composition of Lacout to include the surfactant, as taught by Dias et al. as such ingredients are well known ingredients for hair dye compositions.

In regards to claim 36, Lacout teaches a method for testing the sensitivity of a subject to a hair coloring product before treatment with said hair coloring product, said method comprising applying said hair coloring product in a test location on said subject with a test device (Paragraph 0006, Lines 1-3) having at least one hair colorant chosen from direct colorants (Paragraph 0032, Lines 1-3); at least one hair colorant chosen from oxidation bases and coupling agents (Paragraph 0030, Lines 1-6); but does not teach the test device comprising a tube having an internal space containing a composition, wherein the tube incorporates an outlet aperture, and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture; wherein a liquid or

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solid plug is arranged inside the tube to isolate the outlet aperture from the internal space of the tube, and wherein the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the internal space of the tube is vented or in response to excess pressure inside the tube; and does not teach at least one compound chosen from solvents and surfactants. However, Zhang et al. teaches a liquid containing tube having an internal space containing at least one liquid (Figure 2, 48, liquid), wherein the tube incorporates an outlet aperture (Figure 24, 60, opening), and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture (Col 5, Lines 26-33); wherein a liquid or solid plug (Figure 2, 58, liquid barrier) is arranged inside the tube to isolate the outlet aperture from the internal space of the tube, and wherein the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the internal space of the tube is vented or in response to excess pressure inside the tube (Col 5, Lines 44-50, Col 3, Lines 8-10 and see figure 3). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the testing device of Laurent, to be the liquid stick of Zhang et al. in order to provide a more sanitary testing stick. With regards to the composition, Dias et al. teaches hair dye compositions include surfactants and solvents other than water (Col 4, Line 61- Col 5, Line 7). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the composition of

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Lacout to include the surfactant, as taught by Dias et al. as such ingredients are well known ingredients for hair dye compositions.

Response to Arguments

Applicant's arguments with respect to claims 17, 19-34 and 36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIANNE O'NEILL whose telephone number is (571)270-7489. The examiner can normally be reached on Monday- Friday, 9:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. O./

Examiner, Art Unit 3776

/TODD E. MANAHAN/

Supervisory Patent Examiner, Art Unit 3776